

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI,

Respondent

v.

JOSE F. FLORES.

Appellant

DOCKET NUMBER WD75627

DATE: May 13, 2014

Appeal From:

Circuit Court of Clay County, MO
The Honorable Larry D. Harman, Judge

Appellate Judges:

Division Four
James Edward Welsh, C.J., Lisa White Hardwick, J., and Gerald D. McBeth, Sp. J.

Attorneys:

S. Kate Webber, Kansas City, MO

Counsel for Appellant

Attorneys:

Daniel McPherson, Jefferson City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**STATE OF MISSOURI, Respondent, v.
JOSE F. FLORES, Appellant**

WD75627

Clay County

Before Division Four Judges: Welsh, C.J., Hardwick, J., and McBeth, Sp. J.

Jose F. Flores was charged with ten counts of first-degree statutory sodomy, six counts of first-degree child molestation, and one count of first-degree statutory rape based upon allegations that, in 2005 and 2006, Flores and his girlfriend ("Mother") had sexually abused Mother's two daughters, who were around ages eight and six at the time. Flores was convicted and sentenced on all seventeen counts. Flores appeals.

AFFIRMED.

Division Four holds:

The circuit court did not plainly err or violate Flores's constitutional right to confront his accusers by permitting the State to use the child victims' 2006 out-of-court statements and their 2007 videotaped depositions at trial without holding a new hearing to determine if they were "legally unavailable" to testify in person at the time of the 2012 trial. This claim is refuted by the record and does not facially establish substantial grounds for believing that the admission of this evidence constituted a manifest injustice.

The circuit court did not plainly err in submitting the verdict directors on four of the counts against him, in that they described the charged acts with sufficient specificity to ensure jury unanimity as to his guilt on those counts.

The circuit court did not plainly err or violate the double jeopardy clause by punishing him on six of the counts. Multiple convictions are permissible where, as here, the defendant has in law and in fact committed separate crimes.

The circuit court did not plainly err in convicting and sentencing Flores on a count that did not include his name in the indictment. Flores does not show the "actual prejudice" that is required when such an issue is raised for the first time on appeal.

Opinion by James Edward Welsh, Chief Judge

May 13, 2014

* * * * *

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.